

A-588-815
Sunset Review
Public Document
AD/CVD 05: CC

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh /I/ CM
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Third Sunset Review of the Antidumping Duty Order on
Gray Portland Cement and Clinker from Japan

Summary

We have analyzed the substantive response of the domestic interested party in the third sunset review of the antidumping duty order on gray portland cement and clinker (cement and clinker) from Japan.¹ We recommend that you approve the positions we developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this sunset review:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

The Department of Commerce (the Department) published its amended final affirmative determination of sales at less than fair value and its antidumping duty order on cement and clinker from Japan in the *Federal Register* with the following dumping margins:²

¹ We received no responses from respondent interested parties.

² See *Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker From Japan*, 56 FR 12156 (March 22, 1991), as amended by *Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker From Japan*, 56 FR 21658 (May 10, 1991), and *Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Gray Portland Cement and Clinker From Japan*, 60 FR 39150 (August 1, 1995) (*Order*).

<u>Company</u>	<u>Dumping Margin (percent)</u>
Onoda Cement Company, Ltd. (Onoda)	70.52
Nihon Cement Company, Ltd. (Nihon)	69.89
All Other Manufacturers/Producers/Exporters	70.23

Prior to the first sunset review of the order, the Department conducted three administrative reviews.³ Because the Department lacks authority to conduct duty-absorption inquiries under section 751(a)(4) of the Tariff Act of 1930, as amended (the Act), on pre-Uruguay Round Agreements Act orders, there have been no duty-absorption reviews of the order.⁴ Prior to the first sunset review, the Department also conducted a changed-circumstances review whereby it revoked the order in part with respect to “New Super Fine Cement” from Japan.⁵ There have been two scope rulings on the subject merchandise covered by the order. See *Scope Rulings*, 57 FR 19602 (May 7, 1992) (classes G and H of oil well cement are within the scope of the order), and *Scope Rulings*, 58 FR 27542 (May 10, 1993) (“Nittetsu Super Fine” cement is not within the scope of the order). The order remains in effect for all remaining manufacturers, producers, and exporters of cement and clinker from Japan.

The Department conducted the first sunset review of the order on cement and clinker from Japan pursuant to section 751(c) of the Act and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates it found in the original investigation.⁶ The International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on cement and clinker from Japan would be likely to lead to continuation, or recurrence, of material injury to an industry in the United States within a reasonably foreseeable time.⁷ Thus, the Department published a notice of continuation of the antidumping duty order on cement and clinker from Japan pursuant to 19 CFR 351.218(f)(4).⁸

The Department conducted the second sunset review of the order on cement and clinker

³ See *Gray Portland Cement and Clinker From Japan; Amendment of Final Results of Antidumping Duty Administrative Review*, 58 FR 53705 (October 18, 1993), as amended by *Gray Portland Cement and Clinker from Japan; Amended Final Results Pursuant to Court Decision*, 65 FR 20135 (April 4, 2000), *Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review*, 60 FR 43761 (August 23, 1995), and *Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review*, 61 FR 67308 (December 20, 1996) (collectively, *Reviews*).

⁴ See *FAG Italia S.p.A. v. United States*, 291 F.3d 806 (Fed. Cir. 2002).

⁵ See *Gray Portland Cement and Clinker From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 61 FR 58861 (November 19, 1996).

⁶ See *Gray Portland Cement and Cement Clinker from Japan; Final Results of Antidumping Duty Expedited Sunset Review*, 65 FR 11549 (March 3, 2000).

⁷ See *Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela*, 65 FR 65327 (November 1, 2000).

⁸ See *Continuation of Antidumping Duty Orders: Gray Portland Cement and Cement Clinker from Japan and Mexico*, 65 FR 68979 (November 15, 2000).

from Japan pursuant to section 751(c) of the Act and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates it found in the original investigation.⁹ The ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on cement and clinker from Japan would be likely to lead to continuation, or recurrence, of material injury to an industry in the United States within a reasonably foreseeable time.¹⁰ Thus, the Department published a notice of continuation of the antidumping duty order on cement and clinker from Japan pursuant to 19 CFR 351.218(f)(4).¹¹

On May 2, 2011, the Department initiated the third sunset review of the antidumping duty order on cement and clinker from Japan pursuant to sections 751(c) and 777(i)(1) of the Act and 19 CFR 351.218.¹² The Department received a notice of intent to participate from the Committee for Fairly Traded Japanese Cement (the domestic interested party) within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested party claimed interested-party status under section 771(9)(E) of the Act as a trade or business association, a majority of whose members manufacture, produce or wholesale a domestic like product in the United States. We received a complete substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited (120-day) sunset review of the order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation, or recurrence, of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide the ITC with the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the interested party.

⁹ See *Gray Portland Cement and Clinker from Japan; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 6268 (February 7, 2006) (*Cement from Japan, 2006*).

¹⁰ See *Gray Portland Cement and Cement Clinker From Japan*, 71 FR 32127 (June 2, 2006).

¹¹ See *Gray Portland Cement and Cement Clinker from Japan: Continuation of Antidumping Duty Order*, 71 FR 34892 (June 16, 2006).

¹² See *Initiation of Five-Year ("Sunset") Review*, 76 FR 24459 (May 2, 2011).

1. Likelihood of Continuation or Recurrence of Dumping

Interested-Party Comments

On June 1, 2011, the domestic interested party submitted a substantive response in this sunset review. In its response, it asserted that revocation of the antidumping duty order would lead to a continuation of dumping by manufacturers, producers, and exporters of the subject merchandise from Japan.

The domestic interested party argues that the Department has found dumping margins above *de minimis* consistently after the issuance of the order. Further, the domestic interested party states, the dumping margins have not changed since the first and second sunset reviews when the Department concluded that dumping at levels above *de minimus* have persisted over the life of the order.

The domestic interested party states that, immediately after bonding requirements went into effect on October 31, 1990, the Japanese exporters ceased exports to California and drastically reduced exports to the rest of the United States. The domestic interested party argues that, in the two calendar years preceding issuance of the May 1991 order, Japan's annual exports to the United States exceeded two million tons. After the order was issued, the domestic interested party argues, Japanese imports declined by 85 percent in the next two years, Japan ceased shipping clinker to the United States after 1990, and, since 1994, imports of cement from Japan were negligible in comparison with the 1989 import volume. It also alleges that, since January 1, 1995, imports of cement from Japan have not exceeded 0.85 percent of the 1989 import volume.¹³ The domestic interested party concludes that this decrease in imports indicates a strong likelihood of a recurrence of dumping should the antidumping order be revoked.

Department's Position

The Department draws on guidance provided in the legislative history accompanying the Statement of Administrative Action (SAA), specifically the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report).¹⁴ Accordingly, the Department makes its determinations of likelihood on an order-wide basis.¹⁵ In addition, the Department will normally determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping if one or more of the following factors are met: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b)

¹³ The domestic interested party alleges that the import statistics reported by the Census Bureau are incorrect because they report imports of cement from Canada mistakenly as imports of cement from Japan. The party states that the 0.85 percent reflects an adjustment for this alleged reporting error.

¹⁴ See generally SAA at 879-891, House Report at 56-64, and Senate Report at 45-47, 52.

¹⁵ See SAA at 879 and House Report at 56. See also *Refined Brown Aluminum Oxide from the People's Republic of China: Final Results of Expedited Sunset Review*, 74 FR 4138 (January 23, 2009), and the accompanying Issues and Decision Memorandum (I&D Memo) at Comment 3, and *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 73 FR 65832 (November 5, 2008), and the accompanying I&D Memo at 3 (*Crawfish Tail Meat – PRC*).

imports of the subject merchandise ceased after the issuance of the order; (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹⁶ In addition, pursuant to section 752(c)(1)(B) of the Act, in order to determine whether revocation of an antidumping duty order would be likely to lead to a continuation of dumping, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

Two companies, Onoda and Nihon, participated in the investigation and ultimately received margins of 70.52 percent and 69.89 percent, respectively. The Department calculated the all-others rate in the investigation to be 70.23 percent. See *Order*, 60 FR at 39150. Onoda was reviewed three times and received margins of 33.95 percent, 24.27 percent, and 30.12 percent in those reviews. See *Reviews*, 65 FR 20135, 60 FR at 43769, 61 FR at 67318, respectively. No other dumping margins have been calculated in this proceeding. Therefore, dumping has continued at a level above *de minimis*.

Using statistics available on the ITC Dataweb (see attachment), the Department finds that, since the issuance of the order, imports of Japanese cement and clinker declined significantly. The volume that entered the United States in 2010 was 28,138 metric tons. This is a significant decrease from the 1989 and 1990 pre-order volumes of 2,191,166 and 1,906,442 metric tons, respectively. See Attachment 1: Import Statistics. The Department has conducted three administrative reviews of the order and found that the producers/exporters continued to dump at levels above *de minimis*. Given that dumping continues at levels above *de minimis* and imports from Japan have remained below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. *Magnitude of the Margins Likely to Prevail*

Interested-Party Comments

In its substantive response, the domestic interested party argues that dumping margins have not decreased over the life of the order and that imports have not remained steady or increased.

The domestic interested party asserts that Onoda is the only producer that participated in an administrative review and, although the dumping margins for Onoda in the *Reviews* were lower than the rate the Department calculated in the original investigation, those rates are not indicative of what Onoda's behavior would have been in the absence of the discipline of the order. Moreover, the domestic interested party claims, the Department determined in the first sunset review that Taiheiyo Cement Corporation (Taiheiyo), Onoda's successor, should be treated as a new entity to which the all-others rate should be applied. See *Gray Portland Cement and Cement Clinker from Japan; Final Results of Antidumping Duty Expedited Sunset Review*, 65 FR 11549 (March 3, 2000). Accordingly, it recommends that the Department report 70.23 percent to the

¹⁶ See SAA at 889-890, House Report at 63-64, and Senate Report at 52. See also *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 74 FR 5819 (February 2, 2009), and the accompanying I&D Memo at 3, *Crawfish Tail Meat – PRC* and the accompanying I&D Memo at 3, and *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and the accompanying I&D Memo at 5.

ITC as the applicable dumping margin for all manufacturers, producers, and exporters.

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. The Department will normally provide to the ITC the company-specific dumping margin from the investigation for each company.¹⁷ The Department's preference for selecting a dumping margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.¹⁸ Under certain circumstances, the Department may select a more recently calculated dumping margin to report to the ITC.¹⁹ For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, normally the Department will provide a dumping margin based on the all-others rate from the investigation.²⁰ In certain instances, a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing dumping margins may be more representative of a company's behavior in the absence of an order.

The Department finds that, for this proceeding, it is appropriate to provide the ITC with the dumping margin from the investigation because these rates are the only calculated rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Absent argument or evidence to the contrary, we determine that the dumping margins from the investigation are probative of the behavior of Japanese manufacturers, producers, and exporters without the discipline of the order.

Consistent with the prior sunset review and because we have not determined whether Taiheiyo is the successor-in-interest to either Nihon or Onoda, we agree with the domestic interested party that it is a new entity to which the all-others rate should apply. Therefore, the Department will report to the ITC these same margins as listed in the "Final Results of Review" section below.²¹

¹⁷ See SAA at 890 and *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

¹⁸ See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and the accompanying I&D Memo at 20-21 (*Carbon Steel Products*); see SAA at 890 and House Report at 64.

¹⁹ See section 752(c)(3) of the Act and *Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 65 FR 65294 (November 1, 2000), and the accompanying I&D Memo at "Magnitude of the Margin Likely to Prevail," Comment 3 (citing SAA at 890-91 and House Report at 64).

²⁰ See *Carbon Steel Products* and the accompanying I&D Memo at 20.

²¹ See *Cement from Japan*, 2006.

Final Results of Review

We determine that revocation of the antidumping duty order on cement and clinker from Japan would be likely to lead to continuation or recurrence of dumping at the following weighted-average dumping margins:

Manufacturers/Exporters/Producers	Weighted-Average Dumping Margin (percent)
Onoda	70.52
Nihon	69.89
All Other Manufacturers/Producers/Exporters	70.23

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register*.

Agree X

Disagree

/s/ Ronald Lorentzen

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

8/18/11

Date